



OFFICE *of the* ATTORNEY GENERAL  
GREG ABBOTT

July 11, 2003

Mr. Lance Beversdorff  
Staff Attorney  
Texas Youth Commission  
P.O. Box 4260  
Austin, Texas 78765

OR2003-4802

Dear Mr. Beversdorff:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 184048.

The Texas Youth Commission (the "commission") received two requests for information relating to (1) performance evaluations of three named individuals for specified time intervals; (2) investigations involving two of the named individuals; (3) employee evaluations of one of the named individuals; and (4) a hearing involving another named individual. You state that the commission will release some of the requested information. You claim, however, that other responsive information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and have reviewed the information you submitted.

We first note that the submitted information is subject to section 552.022 of the Government Code. Section 552.022 provides that

the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Gov't Code § 552.022(a)(1). In this instance, the submitted information consists of a completed investigation and a completed report made of, for, or by a governmental body.

Therefore, the commission must release the submitted information under section 552.022(a)(1) unless it is excepted from disclosure under section 552.108 or expressly confidential under other law.

Section 552.101 of the Government Code excepts from required public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." You contend that some of the information that relates to the completed investigation is protected by common-law privacy under section 552.101. Information must be withheld from disclosure under section 552.101 in conjunction with common-law privacy when the information is (1) highly intimate or embarrassing, such that its release would be highly objectionable to a person of ordinary sensibilities, *and* (2) of no legitimate public interest. *See Industrial Found. v. Texas Ind. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). In *Morales v. Ellen*, 840 S.W.2d 519 (Tex. App.—El Paso 1992, writ denied), the court applied the common-law right to privacy addressed in *Industrial Foundation* to an investigation of alleged sexual harassment. The investigation files at issue in *Ellen* contained third-party witness statements, an affidavit in which the individual accused of the misconduct responded to the allegations, and the conclusions of the board of inquiry that conducted the investigation. *See* 840 S.W.2d at 525. The court upheld the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the disclosure of such documents sufficiently served the public's interest in the matter. *Id.* The court further held, however, that "the public does not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released." *Id.*

Thus, if there is an adequate summary of an investigation of alleged sexual harassment, the investigation summary must be released under *Ellen*, but the identities of the victims and witnesses of the alleged sexual harassment must be redacted, and their detailed statements must be withheld from disclosure. *See also* Open Records Decision Nos. 393 (1983), 339 (1982). If no adequate summary of the investigation exists, then all of the information relating to the investigation ordinarily must be released, with the exception of information that would tend to identify the victims and witnesses. In either case, the identity of the individual accused of sexual harassment is not protected from public disclosure. Common-law privacy does not protect information about a public employee's alleged misconduct on the job or complaints made about a public employee's job performance. *See* Open Records Decision Nos. 438 (1986), 405 (1983), 230 (1979), 219 (1978).

In this instance, the completed investigation involves alleged sexual harassment. Accordingly, we find that *Morales v. Ellen* is applicable to the information that relates to the investigation. Furthermore, the investigative information includes an adequate summary of the investigation, which we have marked. The commission must release the investigation summary, with the exception of the information that identifies the victim of the alleged sexual harassment. Likewise, the commission must release the statements of the person accused of sexual harassment, which we also have marked, with the exception of the

information in those statements that identifies the victim. The commission must withhold the information in the investigation summary and in the statements of the accused person that identifies the victim of the alleged sexual harassment, as well as the remaining records of the investigation, under section 552.101 in conjunction with common-law privacy. We have marked the information that the commission must withhold. We note that the investigation summary also contains other information that the commission would ordinarily be required to withhold under section 552.101 in conjunction with common-law privacy under *Ellen*. In this instance, however, the requestor has a special right of access to that information under section 552.023. Information to which the requestor has a right of access under section 552.023 may not be withheld from her under section 552.101 in conjunction with common-law privacy. *See* Gov't Code § 552.023(a); Open Records Decision No. 481 at 4 (1987).<sup>1</sup>

The commission may also be required to withhold information contained in the investigation summary and the statements of the accused person under section 552.117 of the Government Code. Section 552.117(1) excepts from public disclosure the home address and telephone number, social security number, and family member information of a current or former employee of a governmental body who requests that this information be kept confidential under section 552.024. Whether a particular item of information is protected by section 552.117(1) must be determined at the time that the request for the information is received by the governmental body. *See* Open Records Decision No. 530 at 5 (1989). Therefore, the commission may only withhold information under section 552.117(1) on behalf of a current or former employee who made a request for confidentiality under section 552.024 prior to the date on which the commission received the request for information. The commission may not withhold information under section 552.117(1) for a current or former employee who did not make a timely election to keep the information confidential. We have marked the information that may be excepted from disclosure under section 552.117.

Next, we address your claim under section 552.101 of the Government Code with regard to the submitted information that consists of a completed report. You contend that this information is confidential under section 61.073 of the Human Resources Code.<sup>2</sup> Section 61.073 provides as follows:

The commission shall keep written records of all examinations and conclusions based on them and of all orders concerning the disposition or treatment of each child subject to its control. Except as provided by Section 61.093(c), these records are not public and are available only according to the provisions of Section 58.005, Family Code, and Chapter 61, Code of Criminal Procedure.

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<sup>1</sup>Should the commission receive another request for the information relating to this investigation from a person who would not have a right of access to any of the private information, the commission should resubmit this same information and request another decision.

<sup>2</sup>Section 552.101 also encompasses information that another statute makes confidential.

Hum. Res. Code § 61.073. Section 61.093(c) of the Human Resources Code provides for disclosure of information relating to a child who has escaped from custody. *See id.* § 61.093(c). Section 58.005(a) of the Family Code provides that “[i]nformation obtained for the purpose of diagnosis, examination, evaluation, or treatment . . . of a child by [an agency] providing supervision of a child by arrangement of the juvenile court or having custody of the child under order of the juvenile court” may be disclosed only to certain specified persons or under certain specified circumstances. *See* Fam. Code § 58.005(a). Chapter 61 of the Code of Criminal Procedure governs information pertaining to criminal combinations and criminal street gangs. *See* Crim. Proc. Code art. 61.04 (criminal information relating to child). You inform us that the completed report consists of information concerning the disposition of a child who is subject to the control of the commission. You do not inform us, nor does it otherwise appear to this office, that the information in question is subject to disclosure under section 61.093(c) of the Human Resources Code, section 58.005(a) of the Family Code, or chapter 61 of the Code of Criminal Procedure. Therefore, based on your representation, we conclude that the completed report is excepted from disclosure under section 552.101 of the Government Code in conjunction with section 61.073 of the Human Resources Code.

In summary, the commission must withhold the marked portions of the information relating to the completed investigation of alleged sexual harassment that are excepted from disclosure under section 552.101 of the Government Code in conjunction with common-law privacy. The commission may be required to withhold other information that relates to the investigation under section 552.117. The completed report that is confidential under section 61.073 of the Human Resources Code also is excepted from disclosure under section 552.101. The commission must release the rest of the submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov’t Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the

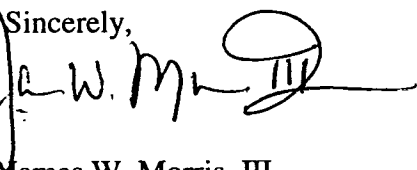
governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in black ink, appearing to read "J.W. Morris III", with a stylized flourish at the end.

James W. Morris, III  
Assistant Attorney General  
Open Records Division

JWM/sdk

Ref: ID# 184048

Enc: Submitted documents

c: Ms. Ginger M. Kinsey  
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(w/o enclosures)